FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL No.126 of 2006.

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Sessions Judge, who heard the appeal, however, found that such a declaration and injunction could not be granted against the defendants no.2 and 4. As a result, he partly allowed the appeal and dismissed the claim in respect of defendants no.2 and 4.

3. Being aggrieved by that the plaintiff has preferred this appeal.

4. Mr.Mohta, the learned counsel for the appellant, has contended that when the trial court had, on appreciation of the evidence, found that none of the defendants had right to pass by that way, the first appellate court could not have come to different conclusion on same set of evidence. The submission has no substance because first appellate court is also court of facts and has every right to appreciate the evidence. The learned Addl.District judge has observed in the judgment that the defendants no.2 and 4 will have such a right on account of the fact that they are the owners of the sub-divisions of the same survey number and, therefore, they had such a right.. This observation of the learned Additional District Judge for rejecting the claim in respect of defendants nos.2 and 4 does not appear to be perverse on account of the fact that every owner of the Sub-division has right to

pass over the boundary of the field in order to approach it. I do not see any perversity in the finding recorded by the first appellate court. As such second appeal is dismissed in limine.

JUDGE

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